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FISCAL IMPACT REPORT

SPONSOR McSorley DATE TYPED 2/14/05 HB _____
 SHORT TITLE County Detention Facility Reform Act SB 723
 ANALYST Peery

REVENUE

Estimated Revenue		Subsequent Years Impact	Recurring or Non-Rec	Fund Affected
FY05	FY06			
	See Narrative			

(Parenthesis () Indicate Revenue Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Administrative Office of the Courts (AOC)
 Attorney General’s Office (AGO)
 New Mexico Corrections Department (NMCD)

No Response

Association of Counties

SUMMARY

Synopsis of Bill

Senate Bill 723 creates the “County Detention Facility Reform Act” in the State Treasury to be administered by the New Mexico Corrections Department for the purpose of reimbursing counties for the incarceration of a “state prisoner”. The proposed legislation repeals Section 33-3-3 NMSA 1978, which provides that the county jail shall be used as the place of detention for every person charged with or convicted of crimes and committed by lawful order.

The proposed legislation sets the rate of reimbursement at eight times the federal hourly minimum wage per day, currently at around \$41.20 per day. The proposed legislation requires the Corrections Department to reimburse counties for the cost of providing ancillary services to “state prisoners”, such as medical, dental, mental health, vision care, prescription drugs, ambulatory, and transportation services.

Significant Issues

NMCD reports a “state prisoner” is defined essentially as a person charged with or convicted of a

felony who:

- Has violate his parole and is charged with a parole violation;
- While on parole is charged with a violation of local, state, tribal, federal or international law;
- Is awaiting transportation and commitment to the Corrections Department following pronouncement of a judgment, sentence or order of confinement;
- Is charged with a violation of his probation by the department or by a district court;
- Is sentenced, ordered or removed by the district court to incarceration in a county detention facility; or
- Is incarcerated on the basis of an arrest and hold order or a warrant issued by the Corrections Department.

PERFORMANCE IMPLICATIONS

NMCD states the proposed legislation contains no appropriation making the Department unable to financially provide the programs and services it is obligated to perform.

FISCAL IMPLICATIONS

NMCD states the proposed legislation makes the Department responsible for reimbursing the counties for these incarceration costs and for ancillary services; however, the bill appropriates no money to NMCD or any other entity to cover these costs.

Continuing Appropriations

This bill creates a new fund and provides for continuing appropriations. The LFC objects to including continuing appropriation language in the statutory provisions for newly created funds. Earmarking reduces the ability of the legislature to establish spending priorities.

ADMINISTRATIVE IMPLICATIONS

NMCD states they will not be able to administer its prison and probation/parole programs if this bill becomes law because the Department will lack the money needed to both administer its programs and still be able to pay the counties for these incarceration costs and ancillary services.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

This bill is identical to Senate Bill 517 and House Bill 710, except is does not contain an appropriation for \$18,835.0.

TECHNICAL ISSUES

AGO states Section 2B uses the phrase “under contract of operation.” AGO questions does that mean a private independent contractor is operating the jail? AGO states Section 3D uses the phrase “is charged with ...by a district court.” AGO reports a district court does not charge parties. AGO states Section 4 mandates reimbursement for holding each prisoner at a certain rate. It adds there shall be reimbursement for providing ancillary services for each prisoner. AGO questions is this a subset of the first sentence or an additional cost? If it is an additional charge, how will the amounts be determined?

NMCD states the definition of “state prisoner” includes those offenders who have only been charged, but not convicted, of a crime. NMCD reports this is an extremely broad and unusual definition of a state prisoner. NMCD reports typically, a person would only become a state prisoner if he or she were first convicted of a crime and then sentenced to the custody of the Corrections Department.

OTHER SUBSTANTIVE ISSUES

AGO states Section 2E appears to be the first attempt in New Mexico law to define the term “state prisoner”. AGO has concerns that state prisoners are going to look at this definition and attempt to craft an appeal based on not being a state prisoner under the definition. AGO suggests the definition should likely use language “means only in this section”, the definition should clarify which state, and the definition should likely use language “only a misdemeanor” because some prisoners may have concurrently committed both a misdemeanor and felony.

AGO reports Section 6 that repeals Section 33-3-3 has nothing to do with state prisoners. Its repeal would appear to delete the statutory requirement that county jails are available to hold county inmates.

NMCD states that if Section 33-3-3 were repealed there would be no statutory provision in law requiring county jails to house persons charged with criminal offenses. The counties might then attempt to argue that they are not obligated to house arrestees of “state prisoners”, and that they have no obligation to jail any persons convicted in their counties of any misdemeanor or felony crimes.

ALTERNATIVES

NMCD suggest amending the bill to make a reasonable appropriation to the Department in the amount of \$26,000.0 to \$30,000.0, and to specifically and clearly limit the Corrections Department’s liability to reimburse the counties to the amount of the appropriation and other monies contained in the County Detention Facility Reform Fund.

NMCD states if the bill is amended to make an appropriation, the bill should also be amended to allow the Department 3 percent of the appropriated money to hire FTEs and otherwise administer the fund in order to off set the significant administrative burden. NMCD further states that if this is not done, the bill should be amended to state the Local Government Division of DFA should administer the fund.

NMCD states if the bill is amended to make an appropriation, the bill should also be amended to make it absolutely clear that the only money that the counties will receive for these incarceration costs will be the money in the fund. Also, to clarify the Department is not obligated to pay any such costs once or if the fund monies are ever expended.

Finally, NMCD states that Section 33-3-3 NMSA 1978 should not be appealed. NMCD reports if repealed, the counties will have no obligation to house or incarcerate any persons that have been charged with or convicted of any criminal offenses in their counties.